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09/609,231	06/30/2000	Jeffrey Bryson	704-P-1-USA	2817
7590 David G. Duckworth DRUMMOND & DUCKWORTH 4590 Mac Arthur Blvd., Ste 500 Newport Beach, CA 92660			EXAMINER FADOK, MARK A	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/609,231
Filing Date: June 30, 2000
Appellant(s): BRYSON, JEFFREY

David G. Duckworth
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/26/2007 appealing from the Office action mailed 9/22/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,309,513	Rose	5/1994
6,295,551	Roberts et al	09-2001
6,728,685	Ahluwalia	04-2004
20010054064	KANNAN	12-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11,16,18, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ahluwalia (US 6,728,685) in view of Roberts (6,295,551) and further in view of Rose (5,309,513).

In regards to claim 11, Ahluwalia discloses a network system for facilitating the negotiation and purchase of goods or services for buyers and sellers, the system comprising:

- a host processor system (FIG 7B);
- at least one buyer computer terminal including a display, operated by buyer of goods or services (FIG 7B);

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at least one primary seller computer terminal including a display, operated by a primary seller of goods or services for selling the goods or services of the seller (FIG 7B);

Ahluwalia teaches a customer assistance center/business assistance center, and customer service representatives (CAC/BAC CSR) that are connected with the system and are available to negotiate, but does not specifically mention that the virtual seller is selling the goods or services of the primary seller. Roberts teaches accessing a secondary sales operator when a primary sales representative is not available (col 15, lines 30-45). It would have been obvious to a person of ordinary skill in the art at the time of the invention to include in Ahluwalia accessing a secondary sales operator when a primary sales representative is not available, because this would assure that a sale is not lost by having the customer wait on the line for an extended amount of time. This would increase revenues and improve customer service by eliminating the frustration of waiting when a customer is ready to buy.

The combination of Ahluwalia and Roberts teaches a virtual seller including a database storing product information concerning the goods or services of the primary seller (col 20, lines 55-60), but does not specifically mention that the virtual seller is a separate entity that does not possess custody or control of goods or services of the primary seller. Rose teaches assigning ubiquitous agents (virtual agents) to support agents who normally cover incoming calls at an automatic call center (primary sellers) during non-rush times such as holidays, evenings, or weekends (col 5, lines 10-20). It would have been obvious to a person having ordinary skill in the art at the time of the invention to include in Ahluwalia/Roberts ubiquitous agents to answer calls during off periods since this may significantly lower costs associated with maintaining the agents present for answering the calls (col 3, lines 47-51).

a first real time two-way communication connection for selectively connecting said buyer computer terminal to said primary seller computer terminal or said virtual computer seller through said host processor system (Rose, FIG 1),

said first communication connection for transmitting transaction data concerning the purchase of goods or services of said primary seller, input by a buyer into said buyer computer terminal, in real time to said seller computer terminal or to said virtual seller computer terminal for display to said seller and for transmitting transaction data, input by a seller into said seller computer terminal of said virtual seller computer terminal, in real time to said buyer computer terminal for display to the buyer (Rose, FIG 1);

said host processor system including processing means for selectively connecting a buyer computer terminal to either a primary seller computer terminal or a virtual seller computer based upon predetermined criteria (Rose, FIG 1), and

a sale agreement means for enabling a buyer to reach an agreement concerning the purchase of goods or services from a seller over the network system (Roberts, col 5, lines 10-30).

In regards to claim 16, Ahluwalia/Roberts/Rose teaches wherein the goods or services include vehicles (col 5, lines 53-62).

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In regards to claim 18, Ahluwalia/Roberts/Rose teaches
a second communication connection for connecting a buyer operating said buyer computer terminal and a primary seller operating said primary seller computer terminal or virtual seller operating said virtual seller computer terminal,
said second communication connection permitting real time speech communication between buyers and sellers for facilitating the real time spoken negotiations for the purchase and sale of goods or services over the network system (see response to claims 11).

In regards to claim 20, Ahluwalia/Roberts/Rose teaches wherein the goods or services include vehicles (col 5, lines 53-62).

Claims 14,15,17,21-27,35-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ahluwalia (US 6,728,685) in view of Roberts in view of Rose and Further in view of Official Notice.

In response to claims 14 and 15, the combination of Ahluwalia/Roberts/Rose teach determining whether the primary seller has goods or services sought to be purchased by the buyer and the use of zip codes from both buyers and seller, but does not specifically mention the location features of these two claims. It was old and well known in the art at the time of the invention to locate and match buyers and sellers by geographic location. It would have been obvious to a person having ordinary skill in the art to include in Ahluwalia/Roberts the location features of the instant claims, because this would provide the buyer with the location of stores that are close and thus saving a long trip to pick up the product, saving time and effort.

In regards to claim 17, Ahluwalia/Roberts/Rose teaches wherein the goods or services include vehicles (col 5, lines 53-62).

In regards to claim 21, Ahluwalia/Roberts/Rose discloses a method of facilitating the negotiation and purchase of goods or services for buyers and sellers comprising the steps of

providing a host processor system interconnected with a plurality of sellers and buyers of goods or services;

transmitting buyer identification information by a buyer of goods or services to the host processor system;

selecting one of the plurality of sellers based upon the buyer identification information by the buyer;

providing a real time two-way data connection between the buyer and the selected seller for transmitting transaction data from the buyer in real time for visual display of the purchase data to the seller and for transmitting transaction data concerning the purchase of goods or services of said primary seller from the seller in real time for visual display of the purchase data to the buyer;

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providing a real time two-way speech connection between the buyer and the selected seller connected simultaneously during said first communication connection and for permitting real time speech communication between the buyer and the selected seller for facilitating the real time spoken negotiations for the purchase and sale of goods or services, and

agreeing over the network system to the purchase of goods or services from a seller (see response to claim 11, 14 and 15).

In regards to claim 22, Ahluwalia/Roberts/Rose teaches wherein the buyer identification information provided by the buyer includes the buyer location (see response to claims 14 and 15).

In regards to claim 23, Ahluwalia/Roberts/Rose teaches compiling inventory records by the plurality of sellers corresponding to the inventory of goods or services offered for sale by the plurality of sellers (FIG 19, item 672);

transmitting the inventory records from the plurality of sellers to the host processor system (FIG 3); and

wherein the buyer identification information by the buyer includes a description of goods or services sought to be purchased (FIG 4A).

In regards to claim 24, Ahluwalia/Roberts/Rose teaches searching the inventory records for a seller having goods or services sought to be purchased by a buyer (FIG 4A); and

the step of selecting one of the plurality of sellers is based upon results of searching the inventory records for a seller having goods or services sought to be purchased by the buyer (FIG 4A and 4B).

In regards to claim 25, Ahluwalia/Roberts/Rose teaches obtaining credit and financial information from a buyer; and

determining whether the buyer is financially capable of paying for goods or services sought to be purchased based upon the credit and financial information of the buyer (col 8, lines 32-46).

In regards to claim 26, Ahluwalia/Roberts/Rose teaches wherein the goods or services include vehicles (col 5, lines 53-62).

In regards to claim 27, Ahluwalia/Roberts/Rose teaches wherein the goods or services include vehicles (col 5, lines 53-62).

In regards to claim 35, Ahluwalia/Roberts/Rose teaches wherein the goods or services include vehicles (FIG 4A).

In regards to claim 36, Ahluwalia/Roberts/Rose teaches wherein the goods or services include vehicles (col 5, lines 53-62).

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Claims 12,13,19 and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ahluwalia in view of Roberts in view of Rose and further in view of Kannan (2001/0054064).

In regards to claims 12 and 13, the combination of Ahluwalia/Roberts/Rose teaches a Customer Service Representative that fields calls from customers from various different entities 24 hours a day including dealers and manufactures, but does not specifically mentioned that the calls are answered because the primary seller is not available. Kannan teaches a CSR being located at a plurality of locations (page 5, para 71). Kannan also teaches business rules in deciding whether to apply a live operator (page 6, para 80), regulating customer service according to the policy of a company (dealer) and intelligent routing where live operators are associate with calls based on availability and matching characteristics (page 5, para 94 - page 10, para 120). It would have been obvious to a person having ordinary skill in the art to include in Ahluwalia/Roberts/Rose the multiple locations of the CSR and rules for determining availability of CSR's as taught by Kannan, because this would provide increased availability of CSR's that are qualified to complete a transaction thus providing improved service to the customer and shorter waits (page 8, para 96).

Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to locate the representative and databases at any location, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

In regards to claim 19, The combination of Ahluwalia/Roberts/Rose/Kannan teaches a second communication connection for connecting a buyer operating said buyer computer terminal and a primary seller operating said primary seller computer terminal or virtual seller operating said virtual seller computer terminal,

said second communication connection permitting real time speech communication between buyers and sellers for facilitating the real time spoken negotiations for the purchase and sale of goods or services over the network system (see response to claim 11).

In regards to claim 28, Ahluwalia/Roberts/Rose/Kannan discloses a method of facilitating the negotiation and purchase of goods or services for buyers and sellers comprising the steps of:

providing a host processor system interconnected with at least one primary seller of goods or services,

at least one virtual seller who is not the primary seller including a database storing product information concerning the goods or services of the primary seller; and a plurality of buyers of goods or services;

transmitting buyer identification information by a buyer to the host processor system;

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selecting the virtual seller or a primary seller by the host processor system based upon predetermined criteria;

providing a real time two-way data connection between the buyer and the selected primary seller or virtual seller for transmitting transaction data from the buyer in real time for visual display of the purchase data to the seller and for transmitting transaction data from the seller in real time for visual display of the purchase data to the buyer, and

agreeing over the network system to the purchase of goods or services from a primary seller or virtual. (see response to claims 11,12 and 13) .

In regards to claim 29, Ahluwalia/Roberts/Rose/Kannan teaches determining whether the primary seller has ceased sales operations; and

selecting the virtual seller or a primary seller by the host processor system is based upon the determination of whether the primary seller has ceased sales operations (see response to claims 12 and 13).

In regards to claim 30, Ahluwalia/Roberts/Rose/Kannan teaches wherein said primary seller operates and ceases sales operations during predetermined periods of the day (see response to claims 12 and 13).

Claims 31-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ahluwalia in view of Roberts in view of Rose in view of Kannan (2001/0054064) and further in view of Official Notice.

In regards to claim 31, Ahluwalia/Roberts/Rose/Kannan teaches determining the location of the buyer; and

the step of selecting the virtual seller or a primary seller by the host processor system is based upon the determination of the location of the buyer (see response to claim 15).

In regards to claim 32, Ahluwalia/Roberts/Rose/Kannan teaches determining the location of the buyer (see response to claim 13); and

determining what goods or services are sought to be purchased by the buyer; and

the step of selecting the virtual seller or a primary seller by the host processor system is based upon the determination of the location of the buyer and the determination of what goods or services are sought to be purchased by the buyer (see response to claim 15).

In regards to claim 33, Ahluwalia/Roberts/Rose/Kannan teaches providing a second communication connection between a buyer and a primary seller or virtual seller (see response to claim 18),

the second communication connection permitting real time speech communication between the buyers and sellers for facilitating the real time spoken

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negotiations for the purchase and sale of goods or services over the network system (see response to claim 11).

In regards to claim 34, Ahluwalia/Roberts/Rose/Kannan teaches providing a second communication connection between a buyer and a primary seller or virtual seller,

the second communication connection permitting real time communication between the buyers and sellers for facilitating the real time spoken negotiations for the purchase and sale of goods or services over the network system (Roberts, FIG 5).

(10) Response to Argument

Appellant argues that the combination would have been non-obvious. The examiner disagrees and notes that motivation for each combination was provided in the previous office action. Further, as applicant appears to acquiesce all the features of the independent claims are taught by the prior art of record. It is noted that all of the elements of the cited references performs the same function when combined as it does in the prior art . Thus such a such a combination would have yielded predictable results (see Sakraida, 425 US at 282, 189 USPQ at 453. Since the independent claims recite only unites old elements with no change in there respective functions the claimed subject matter would have been obvious under KSR, 127 S.Ct at 1741, 82 USPQ2d at 1396 (see Board of Appeals decision 2007-1583).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Appellant argues that the combination does not teach "a virtual seller which is not selling its own goods and does not maintain custody or control of the primary seller's goods, but instead maintains a data base for enabling it to complete a sales transaction". The examiner disagrees and directs the applicant's attention to Rose where the ubiquitous agents do not own the inventory or the right to sell inventory unless the primary seller (call center) decides that the ubiquitous agents will have the opportunity to sell the product by accessing a database of products under control of the data that is distributed to both the call center and the ubiquitous agents as a common resource (database) under the control of the call center access needs.

Appellant argues in regards to claims 12, 13, 29 and 30 that the combination does not teach wherein the connection is made based on whether the primary seller has ceased operations for the day within a predetermined period of the day. The examiner disagrees and directs the appellant's attention to Rose col 3, lines 40-47 where it is clearly taught that the ubiquitous agents (virtual sellers) pick up the sales calls when the call center is closed for holidays or after hours.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Mark Fadok', with a long horizontal flourish extending to the right.

Mark Fadok

Primary Examiner

Conferees:

A handwritten signature in black ink, appearing to read 'Jeffrey Smith', with a large, stylized initial 'J'.

Jeffrey Smith

SPE AU 3625

A handwritten signature in black ink, appearing to read 'Vincent Millin', with a stylized initial 'V' and 'M'.

Vincent Millin

Appeals Specialist